

OFFICE OF THE ARMY GENERAL COUNSEL
FISCAL LAW COURSE

EXPIRED APPROPRIATIONS

SECTION E

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EXPIRED APPROPRIATIONS

I. CONSTITUTIONAL FOUNDATION

- A. U.S. Constitution, Article I, Section 8, Clause 1
- The power to tax and spend.
- B. U.S. Constitution, Article I, Section 8, Clause 16
- Organizing and training the militia.
- C. U.S. Constitution, Article I, Section 9, Clause 7
- No money spent except as a consequence of a lawful appropriation.

II. STATUTORY FOUNDATION

- A. 31 U.S.C. §§ 1551-1557.
- B. 31 U.S.C. § 1301.
- C. 10 U.S.C. § 2782.

III. REGULATORY FOUNDATION

- A. Control and Financial Management of Expired Appropriations Accounts, 1990, Hearings Before the Senate Committee on Governmental Affairs, 101st Cong. 2nd Sess. (statement by Milton J. Socolar, Special Assistant to the Comptroller General, United States General Accounting Office, on August 2, 1990) (Hereafter Socolar Testimony).
- B. Lapsed Accounts: Army, Navy and Air Force "M" and Merged Surplus Authority Account Balances B-238041, May 22, 1990 (unpub.), also referred to as GAO Lapsed Accounts: Army, Navy and Air Force "M" and Merged Surplus Authority Account Balances GAO Rep. No. NSIAD-90-170, available from the U.S. General Accounting Office (hereafter referred to as the 1990 GAO Study).

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- C. GAO, Principles of Federal Appropriations Law pp. 4-33 to 4-43 (1st Ed. 1982) and pp. 5-57 to 5-64 (2d Ed. 1991).
- D. Overview.
 - 1. The 1991 Department of Defense Authorization Act radically altered the manner in which funds are accounted for and used after the end of the period of availability.
 - 2. While the former rules concerning the operation of surplus authority, merged surplus authority, and the "M" accounts have changed, an understanding of the law as it existed prior to the enactment of the 1991 Department of Defense Authorization Act is essential to understanding the new rules governing expired appropriations and the transition rules under which the existing surplus authority, merged surplus authority, and "M" accounts will be converted to the new system of management of expired appropriations.

IV. PRE-FISCAL YEAR 1991 RULES.

- A. General.
 - 1. A flow chart of the Pre-Fiscal Year 1991 procedures is contained in the 1990 GAO Study.
 - 2. There were accounts into which obligational authority and undisbursed balances of appropriations were transferred after the period of availability expired. 1990 GAO Study.
 - 3. These accounts are the surplus authority account, the merged surplus authority account, expired appropriations, and the "M" account. 1990 GAO Study.

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4. Congress created this structure of surplus authority, merged surplus authority, and "M" Accounts in 1956. Pub. L. No. 84-798; codified at 31 U.S.C. §§ 1551-1555.
 5. When Congress established these accounts, no one expected that these accounts would accumulate substantial balances. 1990 GAO Study at p. 1.
 - a. Current balances are difficult to ascertain with precision because of bookkeeping problems associated with maintaining an audit trail over prolonged periods of time, without any fiscal year identifier for the funds. Socolar Testimony.
 - b. 1990 estimates of the DoD Merged Account balances total \$43,893,344,000, broken out as follows:
 - (1) "M" Account - \$18,498,882,000;
 - (2) Merged Surplus Authority Account - \$25,394,462,000. 1990 GAO Study, at p. 3.
- B. Accounting for Appropriations After the Period of Availability.
1. Appropriations that had definite periods of availability, e.g., annual appropriations expired at the end of the fiscal year in which the funds were appropriated. Appropriations available for more than one year, but having a definite period of availability, e.g., procurement funds, available for 2 years, also expired at the end of the two years. GAO, Principles of Federal Appropriations Law p. 4-33 (1982).

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2. Whether the funds had been obligated determined how they were treated after the expiration of the period of availability.
 - a. Unobligated Balances - Surplus Authority and Merged Surplus Authority Accounts.
 - (1) After the period of availability expired, the unobligated balances expired and were withdrawn to the Treasury where they were designated as "Surplus Authority." Socolar Testimony; see also 31 U.S.C. §§ 1551(a)(2), 1552(a)(2), and 1502(b); AFR 177-16, para. 41.
 - (2) Funds in the Surplus Authority Account retained their fiscal year identity for 2 years, after which time any remaining balances were transferred to an account known as the Merged Surplus Authority Account. Socolar Testimony.
 - b. Deobligated funds were treated as if they were unobligated funds and were transferred into surplus authority or merged surplus authority accounts. Lapsed Accounts: Army, Navy and Air Force "M" and Merged Surplus Authority Account Balances B-238041, May 22, 1990 (unpub.); also referred to as: GAO Lapsed Accounts: Army, Navy and Air Force "M" and Merged Surplus Authority Account Balances, GAO Rep. No. NSIAD-90-170.
 - c. No-year appropriations also were withdrawn to the Treasury, if no disbursements had been made from the fund within a two year period.

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- d. Surplus Authority and Merged Surplus Authority accounts were available for restoration to an expired appropriation or an "M" Account to pay for upward adjustments in obligations. Socolar Testimony.
- e. Funds in the Surplus Authority and the Merged Surplus Authority Accounts retained their general purpose identity, e.g., operation and maintenance, procurement, construction, but lost all other accounting classification identification. Socolar Testimony.
- f. Obligated Balances - Expired Appropriations and "M" Accounts.
 - (1) The obligated balances that were not disbursed during the period of availability remained available for adjustment to prior obligations and disbursement or expenditure, but not for new obligation. These appropriations also retained their original fiscal year identity for two years after the expiration of the funds. These accounts were referred to as expired appropriations AR 37-1, Glossary, Section II, Terms; 31 U.S.C. §§ 1551(a)(1), 1552(a)(1), 1553(a).
 - (2) After two years, undisbursed obligated balances merged with similar balances from other fiscal years and were available indefinitely to liquidate obligations and to effect adjustments to prior obligations. These merged accounts were referred to as "M" Accounts. 31 U.S.C. § 1552(a)(1).

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- (3) Funds in the "M" Accounts retained only their purpose identification, as did funds in the Surplus Authority and Merged Surplus Authority Accounts. Socolar Testimony.
- g. Funds accumulated in the "M" Accounts indefinitely. Socolar Testimony.
- 3. Use of Expired Funds.
 - a. Funds in the "M" Account and expired appropriations were obligational authority. They were available only to pay valid pre-existing obligations or to make valid adjustments to those obligations. Socolar Testimony.
 - b. Agencies could restore balances from the Surplus Authority and Merged Surplus Authority Accounts to the "M" Account for payment of upward adjustments to prior obligations previously incurred by the agency. 1990 GAO Study, at p. 1.
 - c. Balances in closed accounts did not represent cash set aside by the Treasury. The balances represented authority to adjust obligations and to authorize payment. 1990 GAO Study, at p. 3.
- 4. Congress perceived that these accounts were subject to potential and actual abuse of executive agencies. 1990 GAO Study. In the National Defense Authorization Act for Fiscal Years 1990 and 1991, Pub. L. No. 101-189, Congress required the Secretary of Defense, or the service Secretaries, to approve restorations to the "M" Account for late contract changes in excess of \$4 million in a fiscal year. 10 U.S.C. § 2782.

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V. FISCAL YEAR 1991 CHANGES TO EXPIRED APPROPRIATIONS

A. General.

1. The 1991 Defense Authorization Bill, Public Law 101-510, contains sweeping revisions in the treatment of expired funds and closed accounts. National Defense Authorization Act for Fiscal Year 1991, Pub. L. No. 101-510, §§ 1405-1406, 104 Stat. 1676 (1990), codified at 31 U.S.C. §§ 1551 through 1557.
2. The revised rules apply to all executive agencies.
3. The revised rules primarily apply to "fixed appropriations." A "fixed appropriation" is defined as an appropriation available for obligation for a definite period of time. The term encompasses annual appropriations and multiple year appropriations.
4. The revised rules require auditable identification of funds and final closure of accounts five years after the expiration of the period of availability.

B. Use of Expired Funds.

1. Some obligations and adjustments will be possible after the end of the period of availability, but before the closing of the account.
 - a. Appropriations retain their complete accounting classification identifiers throughout the entire five year period;
 - b. Appropriations remain available for recording, adjusting, and liquidating obligations properly chargeable to the account. 31 U.S.C. § 1553(a).

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2. On 30 September of the fifth (5th) year after the period of availability of a fixed appropriation ends:
 - (1) The account is to be closed;
 - (2) All remaining obligated and unobligated balances in the account are cancelled; and
 - (3) No funds from the closed account are available thereafter for obligation or expenditure for any purpose. 31 U.S.C. § 1552.
3. Collections authorized or required to be credited to an account, but received after an account is closed will be deposited to the Treasury as miscellaneous receipts.
4. After an account is closed, obligations and adjustments to obligations that would have been properly chargeable to that account, both as to purpose and amount, before the closing of the account and that are not otherwise chargeable to any current appropriation of the agency, may be charged to any current account of the agency available for the same general purpose. 31 U.S.C. § 1553 (b).
5. The authority to charge current accounts discussed in the paragraph above is limited to 1% of the total appropriations for that account or the amount of the unobligated balance of the original appropriation, whichever is less. 31 U.S.C. § 1553(b)(2).

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6. If the period of availability for a fixed appropriation has ended, and if an obligation of funds from that appropriation is required to provide funds for a program, project, or activity to cover a contract change:
 - a. The head of the agency must approve all changes in excess of \$4 million;
 - b. The head of the agency must submit a notification to Congress of intent to obligate funds together with legal and policy justifications in support of the proposed obligation, and wait 30 days before obligating the funds for all changes in excess of \$25 million. 31 U.S.C. § 1553(c).
7. For purposes of the notice requirements discussed in the preceding paragraphs, a contract change is defined as a change to a contract that requires the contractor to perform additional work. The definition specifically excludes adjustments necessary to pay claims or increases in contract price due to the operation of an escalation clause in the contract. 31 U.S.C. § 1553(c)(3).
8. The DoD Comptroller has expanded the definition of a contract change to include any change that results in increases in contractor billable costs.
9. The heads of the defense agencies are required to submit annual reports on the impact of these revisions to the procedures for accounting for expired funds and closing accounts.

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- C. Transition Rules for Existing Closed Accounts.
1. The Authorization Act contains complex rules for the transition of existing unobligated and obligated, but unexpended funds in the "M" Account and in the surplus authority and the merged surplus authority accounts.
 2. Transition Rules are Phased-In.
 - a. The new rules are being phased-in between November 1990 and September 1993.
 - b. The operation of the new rules depends on the status of funds in a given account on the day prior to the enactment of the 1991 DoD Authorization Act. The Authorization Act was passed on 5 November 1990. Accordingly, the critical date for the transition period is 4 November 1990.
 - c. How funds are managed during the transition period is determined by whether the funds were obligated or unobligated on 4 November 1990.
 - d. The transition rules are not codified. The transition rules appear in the National Defense Authorization Act for Fiscal Year 1991, Pub. L. No. 101-510, § 1405(b), 104 Stat. 1676 (1990).

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3. Transition Rules Governing Unobligated Balances.
 - a. All unobligated balances, previously withdrawn under the authority of 31 U.S.C. § 1552(a)(2) (Old Rules) from accounts, the obligated balance of which has not been transferred under 31 U.S.C. § 1552(a)(1) (Old Rules), are restored to the appropriate expired account as of 4 November 1990.
 - b. All unobligated funds previously withdrawn under 31 U.S.C. § 1552(a)(2) (Old Rules), except those restored by operation of subpara. (a) above, are cancelled as of 4 November 1990.
4. Transition Rules Governing Obligated Balances.
 - a. On September 30, 1993, all obligated balances previously transferred under 31 U.S.C. § 1552(a)(1) (Old Rules) will be cancelled.
 - b. After enactment of the 1991 DoD Authorization Act, all balances previously transferred under 31 U.S.C. § 1552(a)(1) (Old Rules) will be subject to the limitations and notice requirements of 31 U.S.C. § 1553(c) (New Rules).
 - c. Thirty days after the submission of the FY 1992 Budget by the President to Congress, (which occurred on 4 February 1991) any obligated amount that had been transferred under 31 U.S.C. § 1552(a)(1) (Old Rules) and which had been in that account (the "M" Account) for greater than five years was deobligated and withdrawn as provided by 31 U.S.C. § 1552(a)(2) (Old Rules). The funds were cancelled as of 5 March 1991.

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- (1) Funds deobligated under this subsection may not be restored.
 - (2) Funds did not have to be deobligated if the amount obligated was to be paid out within 180 days of enactment, i.e., by 5 May 1991.
 - (3) Funds need not be deobligated if they are needed to pay severance pay to foreign national employees.
 - (4) This scrub of old funds in the "M Accounts" is repeated in 1992 and in 1993, until the "M Accounts" are cancelled on 30 September 1993.
5. No later than 31 December 1991, the Secretary of Defense was required to audit all accounts created under 31 U.S.C. § 1552(a) and determine which amounts are valid and which are no longer valid in the accounts. Those amounts determined by the Secretary to be no longer valid shall be deobligated and cancelled.
6. After the cancellation of expired funds required by the changes to the closed accounts structure, obligations and adjustments to obligations that previously would have been chargeable to the "M" Account or the Merged Surplus Authority Account, and which otherwise are not chargeable to current accounts, may be charged to current appropriations, subject to the following limitations:
- (1) Charges shall be limited to the lesser of:
 - (a) the unobligated expired balance of the original appropriation available for the same purpose, or;

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- (b) one percent (1%) of the current appropriation available for the same purpose.
- (2) The maximum amount chargeable is limited by 31 U.S.C. § 1553(b) (New Rules).

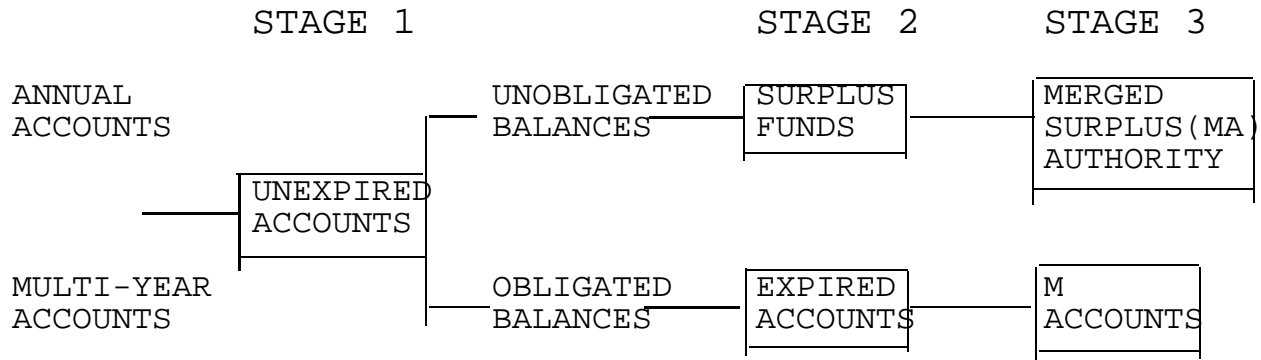
VI. CONCLUSION

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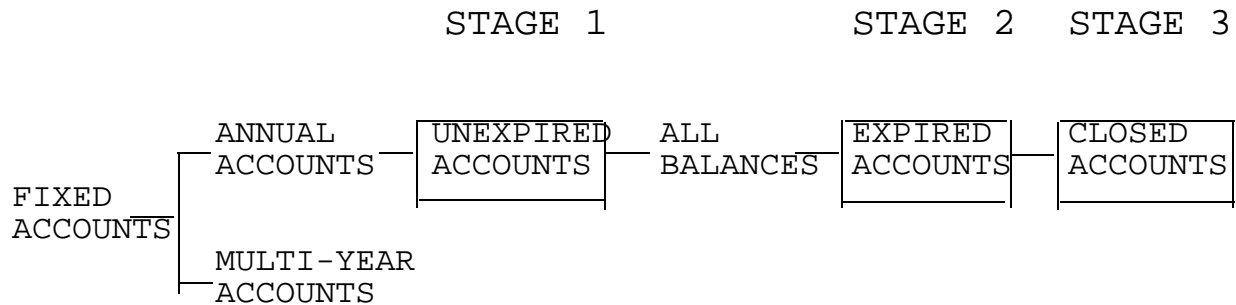
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CLOSING FIXED ACCOUNTS
COMPARISON OF PROCEUDRES

OLD PROCEDURES

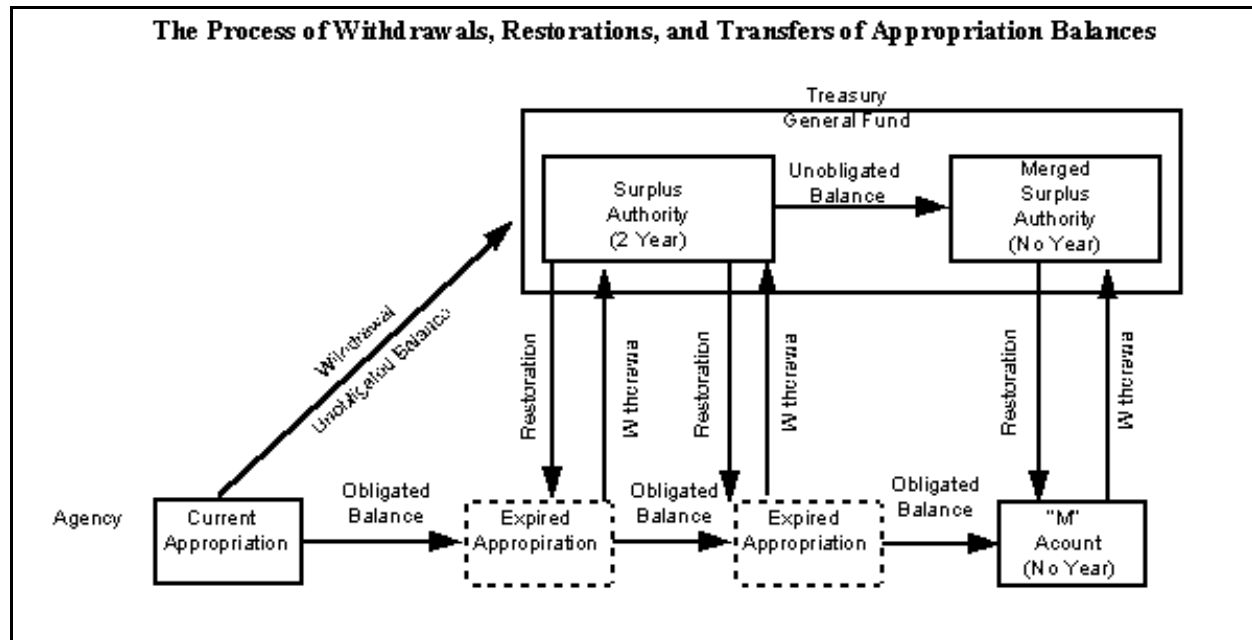


NEW PROCEDURES



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